

1 STEVE MORRIS, Bar No. 1543  
sm@morrislawgroup.com  
2 ROSA SOLIS-RAINEY, Bar No. 7921  
rsr@morrislawgroup.com  
3 MORRIS LAW GROUP  
801 S. Rancho Dr., Ste B4  
4 Las Vegas, Nevada 89106  
Telephone: (702) 474-9400  
5 Facsimile: (702) 474-9422

6 TIMOTHY G. NELSON (*pro hac vice* application forthcoming)  
timothy.g.nelson@skadden.com

7 | EVA Y. CHAN (*pro hac vice* application forthcoming)

eva.chan@skadden.com

8 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

2 || One Manhattan West

9 New York, New York 10001  
Tel. 1- (212) 525-2000

Telephone: (212) 735-3000

**10** Facsimile: (212) 735-2000

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## EVENSTAR MASTER EDITION

12 | EVENSTAR SPECIAL SITUATIONS II

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

16 *In re Ex Parte Application of*  
17 EVENSTAR MASTER FUND SPC for and on  
behalf of EVENSTAR MASTER SUB-FUND I  
18 SEGREGATED PORTFOLIO; and  
EVENSTAR SPECIAL SITUATIONS  
LIMITED,

Applicant,

21 For an Order Pursuant to 28 U.S.C. § 1782 to  
22 Obtain Discovery from JING CAO MO for Use  
in a Foreign Proceeding.

CASE NO.:

***EX PARTE APPLICATION FOR AN  
ORDER PURSUANT TO 28 U.S.C. § 1782  
GRANTING LEAVE TO OBTAIN  
DISCOVERY FOR USE IN A FOREIGN  
PROCEEDING***

22

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1 Applicants/Petitioners Evenstar Master Fund SPC for and on behalf of Evenstar  
 2 Master Sub-Fund I Segregated Portfolio, and Evenstar Special Situations Limited (together,  
 3 "Evenstar"), hereby apply to this Court for an Order pursuant to 28 U.S.C. § 1782, to obtain  
 4 discovery from Mrs. Jing Cao Mo for use in a pending litigation before the Grand Court of the  
 5 Cayman Islands, Financial Services Division.  
 6

7 In support of this Application, Petitioners rely upon the points and authorities set  
 8 forth below, as well as the Declarations of Fleur O'Driscoll and Elise S. Faust ("Faust  
 9 Declaration"), and the exhibits referenced therein.<sup>1</sup> The Proposed Order is attached as Exhibit A-  
 10 1 to the Faust Declaration, and the proposed subpoenas *duces tecum* and *ad testificandum* to be  
 11 issued are attached as Exhibit 2 to the Faust Declaration.  
 12

13 Petitioners respectfully submit that it is appropriate to proceed ex parte for the  
 14 reasons set forth below on page 9-10. Applicants respectfully submit this *Ex Parte* Application for  
 15 an Order to Take Discovery for Use in a Foreign Proceeding Pursuant to 28 U.S.C. § 1782  
 16 ("Section 1782"), authorizing Evenstar to obtain discovery from Jing Cao Mo ("Mrs. Mo") for use  
 17 in proceedings before a foreign or international tribunal.  
 18

**19 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICANT'S  
 EX-PARTE APPLICATION FOR AN ORDER PURSUANT TO 28 U.S.C. § 1782**

**20 PRELIMINARY STATEMENT**

21 Evenstar seeks permission to issue subpoenas to an individual in this District, and  
 22 to obtain documents and testimony for use in litigation against Fang Holdings Limited ("Fang")  
 23 before the Grand Court of the Cayman Islands titled *Evenstar Master Sub-Fund I Segregated*  
 24 *Portfolio et al. v. Mo et al.*, Cause No. FSD 278 of 2020(ASCJ) (the "Cayman Proceeding").  
 25

26 <sup>1</sup> This Application refers to the accompanying Declarations of Fleur Elizabeth O'Driscoll ("O'Driscoll Decl.") and  
 27 Elise S. Faust ("Faust Decl.") attached hereto as Exhibits B and A, respectively. The two proposed subpoenas,  
 namely, one subpoena *duces tecum* and one subpoena *ad testificandum*, (the "Proposed Subpoenas") are  
 attached as Exhibit A-2 of the Faust Declaration.  
 28

The Cayman Proceeding seeks the just and equitable winding up of Fang (a Cayman company whose headquarters are in mainland China). Evenstar commenced the Cayman Proceedings on grounds that, among other things, its Chairman and CEO, Mr. Vincent Mo (who controls an effective 71% voting interest) has engaged in self-dealing, and that Mr. Mo and his management have otherwise acted to the detriment of shareholders, including Evenstar. The discovery sought by Evenstar is pertinent to these matters: Mrs. Mo is a director and/or trustee of certain private family companies and non-profit entities that have engaged in, or are linked to, transactions that are specifically referenced in the Cayman Proceeding.

Mrs. Jing Cao Mo is Mr. Mo's spouse, as well as an officer of Research Center for Natural Conservation ("RCNC") and New York Military Academy ("NYMA"), and a director of Next Decade Investments Limited ("Next Decade"), a privately held Mo family entity that has engaged in some of the transactions that are alleged to constitute self-dealing and alleged to have resulted in gains of over \$38 million to Next Decade and another Mo family entity. As noted below, Mrs. Mo maintains a residence in Henderson, Nevada.<sup>2</sup>

In sum, Mrs. Mo is in a position to furnish information for use in the Cayman Proceeding, and it is appropriate that Section 1782 discovery be granted.

## FACTUAL BACKGROUND

## A. RELEVANT PARTIES AND NON-PARTIES

## 1. Evenstar

Evenstar Master Fund SPC is an exempted segregated portfolio company incorporated under the laws of the Cayman Islands; the sole portfolio within the fund is Evenstar

<sup>2</sup> It is understood that Mrs. Mo also owns an apartment in New York, New York. Evenstar previously sought and obtained relief from the United States District Court for the Southern District of New York pursuant to Section 1782 permitting service of a subpoena on her in that jurisdiction. It appears, however, that she now is resident in this jurisdiction. (See *infra* at 9.)

1 Master Sub-Fund I Segregated Portfolio, which was launched in 2005. Evenstar Special  
2 Situations Limited is a limited liability company also incorporated under the laws of the Cayman  
3 Islands. Headquartered in Hong Kong, Evenstar has made substantial investments in Mainland  
4 China's real estate and internet sectors. (*See* Nov. 16, 2020 Amended Petition as filed in Cayman  
5 Proceeding, O'Driscoll Decl. Ex. B-2 ¶ 18 (hereinafter "Cayman Amended Petition" or "Cayman  
6 Am. Pet.").)

8                   2.        Fang Holdings

9                   This Application, and the litigation in the Cayman Islands, both relate to Fang.  
10          Formerly known as SouFun Holdings Limited, Fang is a company incorporated under the laws of  
11          the British Virgin Islands, which continued in the Cayman Islands with registered number  
12          136949. Fang's principal place of business is in Beijing, Mainland China, where it purportedly  
13          operates the country's largest real estate internet listing and search portal and provides a variety  
14          of ancillary services, including marketing, listing, lead generation, e-commerce and financial  
15          services. (*See* Cayman Am. Pet. ¶¶ 8-12.)

17                   Fang's securities are listed on the New York Stock Exchange as American  
18          Depository Shares ("ADS") under the ticker symbol SFUN. Due to its shares being publicly  
19          traded in the United States, Fang is required to make periodic filings with the United States  
20          Securities and Exchange Commission. (*Id.* ¶ 10.)

22                   3.        Vincent Mo

23                   Fang's Chairman, CEO, and controlling shareholder is Mr. Vincent Mo. SEC  
24          filings by Fang indicate that Mr. Mo, and/or companies owned by him or his family, controls  
25          approximately 71.7% of voting interests in Fang. (*Id.* ¶¶ 15, 33, 45.) In addition, Mr. Mo also  
26          owns and controls a group of hotel companies, apparently held through Upsky Enterprises Limited  
27  
28

1 ("Upsky Enterprises"), a company incorporated in the British Virgin Islands. (*Id.* ¶¶ 104-05.)

2 Upsky Enterprises appears to own ten portfolio hotels (seven in Mainland China, and three in the  
3 United States).

4

5       4.       Jing Cao Mo (Mrs. Mo)

6       Mrs. Mo is the spouse of Mr. Mo. She owns a residence (and is believed to reside)  
7 at 3 Pine Hollow Drive in Henderson, Nevada. (*See* Faust Decl. Ex. A-3 (Deed of lot in Anthem  
8 Country Club in Henderson, Nevada); Faust Decl. Ex. A-5 (Clark County Assessor's Record  
9 indicating the address of lot owned by Jing Cao is 3 Pine Hollow Drive in Henderson, Nevada).)

10      B.       The Foreign Proceedings that are the Subject of this Application

11      1.       Evenstar's Investment in Fang

12       Evenstar is a long-term investor in Fang. It first purchased ADSs in Fang in  
13 December 2014. (Cayman Am. Pet. ¶ 14.) Evenstar has taken steps to convert the balance of its  
14 ADSs into Class A Ordinary Shares, and the conversion in question has been completed, subject  
15 to validation by the Grand Court of the Cayman Islands. (*Id.* ¶¶ 5-8.)<sup>3</sup>

16

17      2.       The Cayman Proceeding: Evenstar Requests that Fang  
18            Be Subject to a Just and Equitable Winding Up Order

19       On November 12, 2020, Evenstar commenced the Cayman Proceeding before the  
20 Grand Court of the Cayman Islands, seeking an order that Fang be wound up on "just and  
21 equitable" grounds, and/or seeking further and alternative relief. (*See* O'Driscoll Decl. ¶¶ 11, 15;  
22 Cayman Am. Pet. ¶¶ 266-74.) Evenstar contends that such relief is justified, among other things,  
23 by a pattern of self-dealing in which the assets of Fang have been appropriated for the benefit of  
24 Mr. Mo (or entities owned or controlled by him, including Upsky Enterprises). (Cayman Am.  
25

26      3       As described more fully in the Cayman Amended Petition, the conversion process was not straightforward, as  
27            Fang failed to honor Evenstar's conversion request, and Evenstar had no choice but to resort to the Grand Court  
of the Cayman Islands for an order permitting the ADSs to be converted. (Cayman Am. Pet. ¶¶ 214-15.)

1 Pet. ¶¶ 103-208.) Other serious allegations of self-dealing, undisclosed related party transactions  
 2 and breach of fiduciary duty are made against Mr. Mo, as majority owner of Fang. (*Id.* ¶¶ 47-  
 3 102.)

4 As detailed in the Cayman Amended Petition, it is alleged that two companies  
 5 owned by Fang private family trusts, Next Decade Investments Limited and Media Partner  
 6 Technology Limited, entered into a December 24, 2019 "Sale and Purchase Agreement" with  
 7 Fang by which Fang was empowered to purchase up to 15 million ordinary shares held by Next  
 8 Decade/Media Partner in China Index Holdings Limited ("CIH"), another publicly-traded  
 9 company that was spun off from Fang in June 2019. (*See* Cayman Am. Pet. ¶¶ 37, 66-67.)  
 10 Fang's "option" to purchase CIH shares was apparently exercised in two tranches, one on  
 11 December 27, 2019 and one on June 23, 2020. (*See id.* ¶¶ 68, 80.)

12 On both occasions that Fang made these purchases, they resulted in very  
 13 significant gains to Next Decade/Media Partner – approximately US\$13.6 million on the first  
 14 tranche and US\$25.39 million on the second tranche. (*See id.* ¶¶ 70, 82.) Notably, the resultant  
 15 gains to Mr. Mo from the first tranche were characterized by Fang as "compensation expenses."  
 16 (*See id.* ¶ 70.) Consequently, as noted in the Cayman Amended Petition, "Fang's executive  
 17 compensation for 2019 increased by 1,687.5% compared to the aggregate executive  
 18 compensation paid for 2018." (*Id.* ¶ 74.)

19 Evenstar further alleges that, in the period prior to the second tranche option  
 20 exercise (i.e. in mid-2020), "Fang's management engaged in market manipulation of CIH's ADS  
 21 price with a view to artificially inflating the market price prior to the Second Option Exercise in  
 22 order to disguise the true extent of the immediate but unrealised loss to Fang." (*Id.* ¶ 83; *see also*  
 23 *id.* ¶¶ 84-90.) The Cayman Amended Petition seeks, among other things, that a liquidator be  
 24  
 25  
 26  
 27  
 28

appointed to Fang for the purposes of winding it up. (*Id.* (Prayer for Relief).) In its discretion, the court may order other relief (such as a buyout of the minority interests) be granted.

The Cayman Amended Petition (and related summons for directions) has been served on Fang. While Mr Mo initially took no steps to enter an appearance and failed to respond to correspondence requesting that he accept service by email, he has since instructed counsel to act on his behalf in the Cayman proceedings (*See* O'Driscoll Decl. ¶ 13). The case has been assigned to Chief Justice Smellie of the Cayman Grand Court, and hearings were held on December 4 and 21, 2020 and a further hearing is scheduled to take place on December 24. (*Id.* ¶¶ 10, 13-14.)

### 3. Allegations in the Cayman Proceeding Concerning Next Decade – and U.S. Properties

The Cayman Amended Petition identifies a number of transactions involving Next Decade, a British Virgin Islands company that, according to SEC filings, is owned or controlled by Mr. Mo through a family trust. (*See* Cayman Am. Pet. ¶ 37.) Mrs. Mo is a director of Next Decade. (Faust Decl. Ex. A-6 (SouFun Holdings Limited SEC Form 13D).) As noted above, the Cayman Amended Petition alleges that Next Decade engaged in options transactions with Fang that resulted in in very significant gains to Next Decade/Media Partner. (*See supra* at 6-7).

The Cayman Amended Petition identifies numerous other transactions involving Fang or Mo-linked entities that, in the circumstances, require examination, including:

- RCNC's \$6 million purchase in 2011 of Arden House, a large mansion in Harriman, New York. RCNC is a non-profit corporation headed by Mr. Mo. (See Cayman Am. Pet. ¶¶ 182-85.) RCNC has stated that it has entered into large mortgage loans with "Upsky," a privately owned hotel company linked to Mr. Mo and/or his family. (See *id.* ¶ 190) At the same time, in running Arden House, RCNC has utilized Fang personnel, email addresses and website resources (*see id.* ¶¶ 190-91); moreover, Mr. Mo and members of his family have made personal use of Arden House. (See *id.* ¶ 188.) These concerns are compounded

1 by RCNC's apparent financial links with Upsky.<sup>4</sup> This warrants further inquiry into the  
 2 source of RCNC's capital and to examine the extent to which it has drawn upon Fang  
 3 resources. (See *id.* ¶ 190.)

- 4 • RCNC's \$15.3 million purchase in 2015 of NYMA, a boarding school in Cornwall-upon-  
 5 Hudson, New York. (See *id.* ¶¶ 192-93.) Since this acquisition, Mr. Mo and his wife, Ms.  
 6 Mo, have become trustees of NYMA; indeed, Mrs. Mo is President. (See *id.* ¶ 194.) NYMA has received loans from both Upsky and Mr. Mo, including a mortgage loan from  
 7 Upsky. (See *id.* ¶¶ 196-98.)
- 8 • RCNC's \$17.35 million purchase in 2017 of Briarcliff College, a vacant campus (and  
 9 former girls' school) in Westchester County. (See *id.* ¶ 195.)

10 As further noted below, certain of these above transactions are the subject of the  
 11 discovery that Evenstar currently seeks.

12 **C. The Prior SDNY Application**

13 On November 18, 2020, in Proceedings No. 7:20-mc-00418-CS (S.D.N.Y.),

14 Evenstar sought leave to issue subpoenas on Mrs. Mo (and certain other recipients), on the basis  
 15 (as believed at the time) that she was resident in Manhattan. On November 30, 2020, Judge  
 16 Cathy Seibert of the Southern District of New York granted relief as to each proposed subpoena  
 17 recipient, including Mrs. Mo. (See Faust Decl. Ex. A-7 (Order of Judge Cathy Seibert).) Efforts  
 18 were made to serve Mrs. Mo at addresses believed to be associated with her, but without  
 19 success.<sup>5</sup> Petitioners now believe that Mrs. Mo is, in actuality, resident in this jurisdiction at the  
 20 Henderson address referred to above.

21 **ARGUMENT**

22 **I. LEGAL FRAMEWORK**

23 **A. Section 1782 Standards**

24 <sup>4</sup> Certain transactions involving Upsky entities were the subject of separate Section 1782 applications in the  
 25 United States District Courts for the Northern District of California and the Eastern District of New York. The  
 26 *ex parte* applications in those cases were granted and the Upsky entities have been served. In addition, and  
 27 pursuant to the SDNY court's direction, Fang and Mr. Mo received advance copies of the SDNY papers prior to  
 28 service being made (and/or attempted) on the subpoena recipients in that district.

<sup>5</sup> Those addresses included 112 West 56th Street Apt. 21S, New York, NY 10019 and 60 East 55th Street Apt  
 14B New York, NY 10022. Mrs. Mo was not present at any of those addresses, though service was attempted  
 multiple times. Another address now seems to have been associated with a different "Jing Cao."

1           28 U.S.C. § 1782 authorizes United States District Courts to grant discovery for  
 2 use in a pending or reasonably contemplated foreign proceeding. *Intel Corp. v. Advanced Micro*  
 3 *Devices, Inc.*, 542 U.S. 241, 259 (2004). The statute states, in relevant part:

4           The district court of the district in which a person resides or is found may order him  
 5 to give his testimony or statement or to produce a document or thing for use in a  
 6 proceeding in a foreign or international tribunal. . . . The order may be made . . .  
 7 upon the application of any interested person.

8 28 U.S.C. § 1782(a).

9           Accordingly, a Section 1782 application must satisfy three statutory requirements:  
 10           "(1) the person from whom discovery is sought resides or is found in this District, (2) the  
 11 discovery is for use in a proceeding before a foreign or international tribunal, and (3) the  
 12 application is made by a foreign or international tribunal or any interested person." *Medeiros v.*  
 13 *Int'l Game Tech.*, No. 2:16-cv-00877-JAD-NJK, 2016 WL 1611591, at \* 2 (D. Nev. Apr. 22,  
 14 2016).

15           Once the statutory requirements are satisfied, courts may then consider certain  
 16 discretionary factors in deciding whether to grant a Section 1782 application, including:  
 17           (1) whether the discovery is sought from a participant in the foreign proceeding who is  
 18 accessible absent Section 1782 aid; (2) the nature of the foreign tribunal, the character of the  
 19 proceedings underway abroad, and the receptivity of the tribunal to U.S. federal court assistance;  
 20           (3) whether the discovery request conceals an attempt to circumvent foreign proof-gathering  
 21 restrictions or policies of a foreign country or the United States; and (4) whether the discovery  
 22 requests are unduly intrusive or burdensome. *Id.*, at \*2; *see also Intel*, 542 U.S. at 264-65.

23           Both the Supreme Court and the Ninth Circuit have acknowledged that Congress  
 24 intended Section 1782 to be a liberal avenue for discovery in aid of foreign and international  
 25 proceedings. *See, e.g., Intel*, 542 U.S. at 247-48; *Advanced Micro Devices, Inc. v. Intel Corp.*,

1 292 F.3d 664, 669 (9th Cir. 2002), *aff'd*, 542 U.S. 241 (2004) ("[A]llowance of liberal discovery  
2 seems entirely consistent with the twin aims of Section 1782: providing efficient assistance to  
3 participants in international litigation and encouraging foreign countries by example to provide  
4 similar assistance to our courts.").

6 Here, Evenstar satisfies the three statutory requirements of Section 1782;  
7 moreover, the discretionary factors favor taking discovery from Mrs. Mo

## B. The Power of the Court to Proceed *Ex Parte*

9 Section 1782 applications are routinely granted *ex parte*. Granting this Application  
10 on an *ex parte* basis will not impinge upon Mrs. Mo's due process rights, as they may subsequently  
11 move to quash the subpoenas and/or vacate the order granting the Application. *See, e.g., In re*  
12 *Application of O'Keefe*, No. 2:14-cv-01518-RFB-CWH, 2016 WL 2771696, at \*2 (D. Nev. Apr. 4,  
13 2016) ("If a district court grants a § 1782 application, the subpoenaed party can move to quash the  
14 subpoena, but bears the burden of persuasion in the course of civil litigation."); *see also In re*  
15 *Republic of Ecuador*, No. C-10-80225 MISC CRB (EMC), 2010 WL 3702427, at \*2 (N.D. Cal.  
16 Sept. 15, 2010) ("[I]t is common for the process of presenting the request to a court and to obtain  
17 the order authorizing discovery to be conducted *ex parte*. Such *ex parte* applications are typically  
18 justified by the fact that the parties will be given adequate notice of any discovery taken pursuant  
19 to the request and will then have the opportunity to move to quash the discovery or to participate  
20 in it.") (internal quotations, alterations, and citations omitted).

23 II. THE APPLICATION MEETS SECTION 1782'S STATUTORY REQUIREMENTS

#### A. Mrs. Mo Is "Found" Within This District

25 The evidence concerning the Henderson, Nevada address indicates that Mrs. Mo  
26 is a resident who is "found" in this District. *See In re Judicial Assistance Pursuant to 28 U.S.C.*  
27 § 1782 by Macquarie Bank Ltd., No. 2:14-cv-0797-GMN-NJK, 2014 WL 7706908, at \* 2 (D.

1 Nev. Jun. 4, 2014) (individual was deemed to be "found" in the district when the petitioner  
 2 presented evidence that the individual resides in the district), *reconsideration denied*, No. 2:14-  
 3 cv-00797-GMN-NJK, 2015 WL 3439103 (D. Nev. May 28, 2015); *see also* 28 U.S.C. § 1782  
 4 ("The district court of the district in which a person *resides* or is found may order him to give his  
 5 testimony or statement or to produce a document or other thing for use in a proceeding in a  
 6 foreign or international tribunal, including criminal investigations conducted before formal  
 7 accusation." (emphasis added)). Therefore, Mrs. Mo satisfies the first statutory requirement of  
 8 Section 1782 because she resides in this District.

10                   B.     **The Discovery Sought Is For "Use" In A Foreign Proceeding**

11                   There is no question that the Cayman Proceeding is a foreign proceeding for  
 12 purposes of Section 1782. *See, e.g., In re Application of Savan Magic*, No. 2:17-cv-01689-  
 13 JCM-NJK, 2017 WL 6454240, at \*3 (D. Nev. Dec. 18, 2017) (the statutory requirements for a §  
 14 1782 application were met where application was sought in aid of litigation in Singapore).

16                   Having commenced the Cayman Proceeding against Fang, Evenstar undeniably  
 17 satisfies the "use" requirement in Section 1782. *See Macquarie Bank*, 2014 WL 7706908, at \*2  
 18 (concluding that discovery intended for use in "pending and prospective actions" in a foreign  
 19 court satisfied the second statutory factor). Evenstar bears the burden of proof in the Cayman  
 20 Proceeding, and Cayman courts are receptive, in principle, to receiving documentary and other  
 21 evidence obtained in Section 1782 actions in aid of domestic Cayman proceedings. (O'Driscoll  
 22 Decl. ¶ 27-28.) Further, an applicant is not required to prove that the information would be  
 23 discoverable or even admissible in the foreign proceeding. *See Cryolife, Inc. v. Tenaxis Med.,*  
 24 *Inc.*, No. C08-05124 HRL, 2009 WL 88348, at \*4 (N.D. Cal. Jan. 13, 2009) ("there is no  
 25 requirement under § 1782 that the requested information would be discoverable"); *Qualcomm*  
 26 *Inc.*, No. 18-MC-80134-NC, 2018 WL 6660068, at \*2 (N.D. Cal. Dec. 19, 2018) ("[F]ederal  
 27

1 courts, in responding to [§ 1782] requests, should not feel obliged to involve themselves in  
 2 technical questions of foreign law relating to . . . the admissibility before such tribunals of the  
 3 testimony or materials sought.") (internal quotations and citations omitted, alterations in  
 4 original).

5 Moreover, Mrs. Mo appears to possess relevant information which is material to  
 6 the Cayman Proceeding and appears to have been involved in at least some of the transactions  
 7 identified in the Cayman Amended Petition. The Proposed Subpoenas thus seek documents and  
 8 testimony that is pertinent to the issues in the Cayman Proceeding.

10 **C. The Evenstar Entities Are "Interested Persons"**

11 Lastly, Section 1782 requires an applicant to show that it possesses a reasonable  
 12 interest in the foreign proceeding. Here, there is "[n]o doubt litigants are included among, and  
 13 may be the most common example of, the 'interested person[s]' who may invoke § 1782." *Intel*,  
 14 542 U.S. at 256 (second alteration in original); *see also Macquarie Bank*, 2014 WL 7706908, at \*2  
 15 ("Petitioner is a party to the [foreign] proceedings . . . and therefore qualifies as an 'interested  
 16 person.'") (internal citation omitted)). Both Evenstar entities are petitioners in the Cayman  
 17 Proceeding, and thus each qualifies as an "interested person" pursuant to Section 1782.

18 **III. THE SECTION 1782 DISCRETIONARY FACTORS WEIGH IN  
 19 FAVOR OF PERMITTING THE PROPOSED DISCOVERY**

20 Once a petitioner has satisfied the statutory requirements of Section 1782, courts  
 21 then turn to whether the four discretionary *Intel* factors have been met. *See Savan Magic*, 2017  
 22 WL 6454240, at \*2 ("If the Court has determined that it has the statutory authority to grant the  
 23 request, then it turns to whether it should exercise its discretion to do so.").

24 The proposed discovery consists of a document production subpoena, as well as a  
 25 deposition subpoena, each seeking discovery pursuant to the Federal Rules of Civil Procedure (as  
 26

1 permitted by Section 1782). The document production subpoena seeks information pertaining to  
 2 the issues raised in the Cayman Amended Petition, including: (i) the dealings between Next  
 3 Decade and Fang; and (ii) the source of funds for the RCNC/NYMA transactions and the  
 4 relationship of these entities with other companies controlled by Mr. Mo, including both Fang and  
 5 the "Upsky" companies.  
 6

7                   Each of the discretionary factors warrants the issue of these subpoenas. First, Mrs.  
 8 Mo is not a party to the Cayman Proceeding and thus is not subject to its discovery orders. *Cf.*  
 9 *Intel* 542 U.S. at 264. Accordingly, in the absence of relief pursuant to Section 1782, third-party  
 10 discovery from Mrs. Mo may not be available to Evenstar in the Cayman action. *See Medeiros*,  
 11 2016 WL 1611591, at \*3 ("Respondent is not a party to the underlying Brazilian criminal  
 12 proceeding, rendering the need for assistance from this Court more readily apparent.").  
 13

14                   The second *Intel* factor is whether a foreign tribunal would be receptive to  
 15 evidence obtained pursuant to a 1782 application. *See id.* ("Second, the Court analyzes the  
 16 nature of the foreign tribunal, the character of the proceedings underway abroad, and the  
 17 receptivity of the foreign court."). Courts within this Circuit often presume that foreign tribunals  
 18 will be receptive to evidence obtained in the United States. *See, e.g., id.* (finding this factor in  
 19 favor of granting the application when "[t]here [wa]s no indication that the Brazilian court would  
 20 be unreceptive to such discovery"); *In re Mak*, No. C 12-80118 MISC SI, 2012 WL 1965896, at  
 21 \*2 (N.D. Cal. May 31, 2012) ("The Hong Kong court would presumably be receptive to the  
 22 discovery request as it concerns information essential to obtaining accurate facts that bear on the  
 23 divorce proceeding."). Moreover, courts should only deny a 1782 application if there is  
 24 "*authoritative proof* that [the] foreign tribunal would reject evidence obtained with the aid of  
 25 section 1782." *In re Ex Parte Application by Varian Med. Sys. Int'l AG*, No. 16-MC-80048-  
 26  
 27  
 28

1 MEJ, 2016 WL 1161568, at \*4 (N.D. Cal. Mar. 24, 2016) (emphasis added) (internal quotations  
 2 and citations omitted). That presumption is satisfied here and is buttressed by the accompanying  
 3 declaration from Evenstar's Cayman counsel explaining that, in a just and equitable winding up  
 4 proceeding, the court has discretion to admit documents obtained through 1782 action, and to  
 5 evaluate and potentially admit testimony received through Section 1782. (O'Driscoll Decl. ¶ 27-  
 6 28.)

8 The third *Intel* factor is "whether the § 1782(a) request conceals an attempt to  
 9 circumvent foreign proof-gathering restrictions or other policies of a foreign country or the  
 10 United States." *Intel*, 542 U.S. at 265. The discovery sought by Evenstar does not attempt to  
 11 evade any proof-gathering restrictions, nor does it violate public policy. Evenstar's requests do  
 12 not seek proprietary information, state secrets or attorney-client communications. If Mrs. Mo  
 13 were to reasonably believe that an individual document requests raise such concerns, Evenstar is  
 14 willing to consider accommodating such concerns, such as stipulating to a protective order. *See*  
 15 *Varian*, 2016 WL 1161568, at \*6 ("the Court is willing to consider proposed protective orders to  
 16 prevent the misuse of this information").

18 The last *Intel* factor asks whether the discovery requests are "unduly intrusive or  
 19 burdensome." *Intel*, 542 U.S. at 265. This standard is identical to the standard under U.S.  
 20 domestic civil litigation under the Federal Rules of Civil Procedure. *See In re Bayer AG*, 146  
 21 F.3d 188, 195 (3d Cir. 1998) ("The reference in § 1782 to the Federal Rules suggests that under  
 22 ordinary circumstances the standards for discovery under those rules should also apply when  
 23 discovery is sought under the statute."). Each of Evenstar's requests is narrowly tailored and  
 24 directly relevant to issues raised in the Cayman Proceeding. Accordingly, whatever burden is  
 25 imposed upon Mrs. Mo is reasonable and proportionate given the circumstances.  
 26  
 27  
 28

The Cayman Proceeding raises serious allegations of corporate malfeasance and misappropriation of Fang's corporate funds to the benefit of Mr. Mo, his family, and entities controlled by him. Accordingly, relative to the focused requests and information sought by Evenstar, the information sought from Mrs. Mo is potentially important.

## **CONCLUSION**

For the foregoing reasons, Evenstar respectfully asks this Court to (a) grant the Application for an Order to Conduct Discovery; (b) enter the Proposed Order attached to the Faust Declaration as Exhibit A-1; and (c) authorize Evenstar, pursuant to 28 U.S.C. § 1782, to issue and serve the Subpoenas attached to the Faust Declaration as Exhibit A-2.

December 24, 2020

Respectfully submitted,

/s/ Steve Morris  
Steve Morris, Bar No. 1543  
Rosa Solis-Rainey, Bar No. 7921  
MORRIS LAW GROUP  
801 S. Rancho Drive Suite B4  
Las Vegas, Nevada 89106  
[sm@morrislawgroup.com](mailto:sm@morrislawgroup.com)  
[rsr@morrislawgroup.com](mailto:rsr@morrislawgroup.com)

Timothy G. Nelson (*pro hac vice application  
forthcoming*)  
Eva Y. Chan (*pro hac vice application  
forthcoming*)  
SKADDEN, ARPS, SLATE, MEAGHER &  
FLOM LLP  
One Manhattan West  
New York, New York 10001  
timothy.g.nelson@skadden.com  
eva.chan@skadden.com

Attorneys for Applicants  
EVENSTAR MASTER FUND SPC and  
EVENSTAR SPECIAL SITUATIONS  
LIMITED

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